STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 17, 2013
v	No. 312573 Macomb Circuit Court
ELIJAH JAMES JOHNSON, Defendant-Appellant.	LC No. 2012-000825-FH

Before: WILDER, P.J., and FORT HOOD and SERVITTO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of first-degree retail fraud, MCL 750.356c. The trial court sentenced defendant to one to five years' imprisonment. We affirm.

Off-duty police officer James Minano was driving to do shopping at a Walgreens in Warren, Michigan, when he was cut off by a gold-colored SUV. Minano saw two individuals in the SUV, which also proceeding to the Walgreens's parking lot. The driver of the SUV backed into a parking spot near the front doors of the Walgreens.

Tiffany Smallwood worked as a cashier at the Walgreens and testified that she saw defendant enter the store right before another man. After defendant acted suspiciously, Smallwood asked him whether she could help him find any specific item. Defendant asked for nicotine gum and asked for a price check of the item. In the meantime, the other man grabbed several cartons of cigarettes. When confronted by the cashier, the other man ran out of the convenience store with the cigarettes. Defendant followed him out of the store. Both men left in the same gold SUV; defendant was driving. Minano witnessed the entire incident while he was shopping in the Walgreens. Minano saw the first man run out of the store with cigarette cartons, defendant walk out of the store shortly thereafter, and both enter the gold-colored SUV, with defendant entering the driver's side and the other man entering the passenger side. Minano contacted the Warren Police Department to give them this information, and officers were dispatched to search for the gold-colored SUV.

After a short search, police discovered the vehicle at a gas station with several open cigarette cartons in the front seat. Police arrested defendant after the cashier positively identified him.

Defendant's sole issue on appeal is that he is entitled to a new trial because the verdict was against the great weight of the evidence.[1] Defendant failed to preserve this issue by moving for a new trial in the trial court. *People v Cameron*, 291 Mich App 599, 617; 806 NW2d 371 (2011). Thus, we review the issue for plain error affecting defendant's substantial rights. *People v Reid (On Remand)*, 292 Mich App 508, 513; 810 NW2d 391 (2011).

A verdict is against the great weight of the evidence if the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow it to stand. *People v Musser*, 259 Mich App 215, 218-219; 673 NW2d 800 (2003).

MCL 750.356d(1)(b), or second-degree retail fraud, consists of "stealing property of the store offered for sale at a price of $200 or more but less than $1,000, while the store is open to the public." A defendant who is properly convicted of second-degree retail fraud and who has a prior retail fraud conviction is properly deemed guilty of first-degree retail fraud pursuant to MCL 750.356c(2). *People v Johnson*, 195 Mich App 571, 572; 491 NW2d 622 (1992).

Defendant was convicted on an aiding and abetting theory. The elements of aiding and abetting are "(1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement." *People v Moore*, 470 Mich 56, 67-68; 679 NW2d 41 (2004).

The jury's verdict convicting defendant of first-degree retail fraud under an aiding and abetting theory of liability is not against the great weight of the evidence. Defendant does not dispute that the other man committed the larceny. Defendant contends that the verdict was against the great weight of the evidence because it failed to establish that he performed an act in furtherance of the crime, gave encouragement, or assisted the commission of the crime beyond a reasonable doubt. But the evidence did not clearly preponderate against this conclusion. Instead, the evidence showed that defendant traveled to the Walgreens with the other man. Once inside the Walgreens, defendant occupied the cashier's attention, while the other man took the cartons of cigarettes. The evidence supported the jury's conclusion that defendant's actions not only aided the other man, but also were done with the intent to aid the other man in committing the crime. Additionally, the evidence established that defendant drove the SUV containing the other man and the stolen cigarettes after the incident. A reasonable jury could properly infer from this evidence that defendant's intent was to aid in the larceny. See *People v Hartford*, 159 Mich App 295, 302; 406 NW2d 276 (1987) ("Planning in advance to provide a felon with a quick 'getaway' is sufficient assistance to find defendant guilty as an aider and abettor."). Therefore, defendant has not shown plain error with respect to the jury's verdict.

[1] While defendant also references sufficiency of the evidence in his statement of the questions presented, he does not address the issue in his argument. To the extent that he raises a sufficiency of the evidence issue, that issue is abandoned. *People v McGraw*, 484 Mich 120, 140; 771 NW2d 655 (2009).

Affirmed.

/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto